Public Prosecutor v Ramli Long & Anor

HIGH COURT (KUALA LUMPUR) — CRIMINAL TRIAL NO 47-14-92
VISU SINNADURAI J
24 AUGUST 1992

Criminal Law *— Dangerous drugs — Trafficking — Whether accused had custody and control of drugs — Whether accused had care and management of premises where drugs were found — Dangerous Drugs Act 1952 s 37*

Both the accused were arrested in their house after a police raid. Adjacent to their house was a pondok in which some substance, suspected to be ganja was found. The pondok was opened with a set of keys found in the house occupied by both the accused. At the house, an electricity bill for the pondok was also found. The prosecution's case was that as the key and the electricity bill for the pondok were found in the house occupied by both the accused, they are both also the occupiers of the pondok and therefore had custody and control over the drugs. They were therefore deemed to be trafficking in the drugs.

Held, acquitting and discharging both the accused:

(1) In order to establish their case against the accused persons, the prosecution must establish that they had possession of the drugs found in the pondok. They can do that by invoking the necessary presumptions under s 37 of the Dangerous Drugs Act 1952 or by adducing direct evidence. If the prosecution is able to prove that the accused persons had custody and control of the drugs in the pondok, the presumption of both knowledge and possession would be raised under s 37(d). It is imperative that there be close nexus between the drugs found in the pondok and the accused. The prosecution can rely on s 37(g) for this purpose. However, only knowledge will be presumed. It must first be established that the accused persons had care and management of the pondok so as to deem them to be the occupiers of the pondok under s 37(b) before the presumption under s 37(g) may be relied upon.

(2) In this case, there is no other evidence to establish occupancy of the pondok by the accused persons except by the keys and the electricity bill for the pondok found in their house. In the absence of any other evidence, occupancy of the pondok cannot be established conclusively by these two factors alone.

[Bahasa Malaysia summary

Kedua-dua tertuduh telah ditahan di dalam rumah mereka selepas suatu serbuan polis. Di dalam pondok yang bersebelahan dengan rumah mereka, dijumpai bahan yang disyaki merupakan ganja. Pondok itu dibuka dengan satu set kunci yang dijumpai di dalam rumah yang didiami oleh kedua-dua si tertuduh. Di dalam rumah itu, bil bekalan elektrik untuk pondok itu juga dijumpai. Kes pihak pendakwa adalah bahawa oleh kerana kunci dan bil elektrik untuk pondok itu telah

dijumpai di dalam rumah yang didiami oleh kedua-dua si tertuduh, mereka berdua adalah juga penghuni pondok itu dan oleh itu, mempunyai jagaan dan pengawalan atas dadah itu. Oleh itu, mereka disifatkan sebagai pengedar dadah.

Diputuskan, membebaskan kedua-dua si tertuduh:

(1) Supaya dapat membuktikan kes mereka terhadap kedua-dua si tertuduh, pihak pendakwa mesti membuktikan bahawa mereka memilik dadah yang dijumpai di dalam pondok itu. Mereka dapat melakukannya dengan menggunakan anggapan yang perlu di bawah s 37 Akta Dadah Berbahaya 1952 atau dengan mengemukakan keterangan langsung. Jika pihak pendakwa berjaya membuktikan bahawa kedua-dua si tertuduh mempunyai jagaan dan pengawalan ke atas dadah di dalam pondok itu, anggapan pengetahuan dan pemilikan akan dibangkitkan di bawah s 37(d). Adalah sangat mustahak bahawa terdapat perhubungan yang rapat di antara dadah yang dijumpai di dalam pondok itu dan kedua-dua si tertuduh. Pihak pendakwa boleh menggunakan s 37(g) untuk tujuan ini. Tetapi hanya pengetahuan yang akan dianggap. Terlebih dahulu, mesti dibuktikan bahawa kedua-dua si tertuduh mempunyai jagaan dan pengurusan terhadap pondok itu supaya mensifatkan mereka sebagai penghuni pondok itu di bawah s 37(b) sebelum anggapan di bawah s 37(g) boleh digunakan.

(2) Di dalam kes ini, tidak terdapat sebarang keterangan untuk membuktikan bahawa kedua-dua si tertuduh adalah penghuni pondok itu, melainkan kunci dan bil elektrik untuk pondok itu yang dijumpai di dalam rumah mereka. Dengan tiadanya sebarang keterangan yang lain, penghunian pondok itu tidak dapat dibuktikan secara muktamad oleh dua faktor ini sahaja.]

Cases referred to

1 *Choo Chang Teik & Anor v PP* [1991] 3 MLJ 423 (refd)
2 *Lee Chee Meng v PP* [1992] 1 MLJ 322 (refd)
3 *Pang Chee Meng v Pendakwa Raya* [1992] 1 MLJ 137 (refd)
4 *Haw Tua Tau v PP* [1981] 2 MLJ 49 (refd)
5 *PP v Munusamy* [1987] 1 MLJ 492 (refd)

Legislation referred to

Dangerous Drugs Act 1952 s 37
Juvenile Courts Act 1947 ss 3, 16, 40

Shamsul Sulaiman (Deputy Public Prosecutor) for the prosecution.
Bhagwan Singh (*Bhagwan Singh*) for the first accused.
Gulam Mustaffa (*Gulam Mustaffa & Co*) for the second accused.

Visu Sinnadurai J: A police party raided a house, no 62, Kampung Masjid, Pantai Dalam, Kuala Lumpur ('no 62') at about 2.30am, 3 December 1991. A search was conducted of the house and some brown paper; some substance suspected of being ganja (not the subject matter of the present charge) and some smoking paraphernalia, were found. There was nothing else recovered from the house except for a bunch keys.

A Inspector Lai Joo Wah, who headed the team of police officers, then went to another hut ('the pondok') which was adjacent to no 62. He used one of the keys which he had recovered in no 62 and unlocked a padlock and entered the pondok. In the corner of the pondok, Inspector Lai found, in the lower compartment of an old disused gas stove, two slabs of substance
B suspected of being ganja and a plastic bag containing 38 bundles of rolls suspected of containing ganja. Inspector Lai took possession of these items and returned to no 62. There, Inspector Lai took possession of two electricity bills, one of the bills was for no 62 which was in the name of Ramli Long and the other for the pondok in the name of one Mat bin Daros, and another set of keys.

C Inspector Lai then arrested the four persons found at no 62, ie the entire family which consists of the father, mother, son and daughter.

The present trial concerns that of the father and son only. They are charged for trafficking in dangerous drugs. The charge read as follows:

> D Bahawa kamu bersama-sama pada 3 Disember 1991 jam lebih kurang 0230 hrs di dalam sebuah pondok, di hadapan rumah no 62, Kampong Masjid Pantai Dalam Kuala Lumpur, dalam Bandaraya Kuala Lumpur, di dalam Wilayah Persekutuan, telah mengedar dadah berbahaya iaitu ganja yang beratnya berjumlah 4494g. Oleh itu kamu telah melakukan satu kesalahan di bawah s 39B(1)(a) Akta Dadah Berbahaya 1952 (Semakan 1980) dan boleh dihukum di bawah s 39B(2) Akta yang sama.

E It should be pointed out at this stage, that though there were other items recovered by the police at no 62 at the time of the raid, as they did not form the subject matter of the present charge, the recovery of these items are not relevant for the present purposes. They have, therefore been accordingly disregarded completely for the purposes of this trial. A similar consider-
F ation was also adopted by this court as far as the other charges relating to the four arrested persons, especially the mother and daughter were concerned.

Preliminary point: Second accused a juvenile

G At the commencement of the trial, the court's attention was drawn to the fact that the second accused (the son) was at the date of the alleged commission of the offence, under the age of 18. However, as this is a joint charge, this court has the power under the proviso to s 3, read together with s 40 of the Juvenile Courts Act 1947, to hear the charge against the second accused even though he was a juvenile within the meaning of the said Act.

H As the charge against the second accused carried the mandatory death sentence if found guilty, the effect of s 39B(2) of the Dangerous Drugs Act 1952, read together with s 16 of the Juvenile Courts Act 1947 was further explained to the second accused by this court. Section 16 provides as follows:

> I Sentence of death shall not be pronounced or recorded against a person convicted of an offence if it appears to the Court that the time when the offence was committed he was a juvenile: but in lieu thereof the Court shall order him to be detained during the pleasure of the Yang di-Pertuan Agong if the offence was committed in the Federal Territory of Kuala Lumpur and the Federal Territory of Labuan ...

Prosecution's case

The prosecution's main piece of evidence is that as the keys to the pondok and the electricity bill for the pondok were found in no 62, occupied by the first and second accused, they are both also the occupiers of the pondok. As the drugs were found in the pondok, of which both the accused are said to be the occupiers, they had custody and control over it, with the necessary knowledge, by the application of the presumptions under s 37(b), (d) and (g), and are therefore deemed to be traffickers under s 37(d) and (a). The prosecution also submitted that there was also direct evidence of occupancy of the pondok by the two accused persons.

Basically, the prosecution's case was based on these grounds only. The prosecution did not rely on any caution statements made by the accused persons or to any evidence under s 27 of the Evidence Act 1956.

The law

For the prosecution to make out a case against the accused persons, the prosecution must establish that both the accused persons had possession of the drugs found in the pondok. To establish possession, it is necessary for the prosecution to establish custody and control of the drugs and also that the accused persons had knowledge of the drugs. This the prosecution may do, either with the aid of the necessary presumptions under s 37, or by adducing direct evidence. The possibly relevant presumptions for the present purposes are s 37(b), (d) and (g).

To invoke s 37(d), the prosecution must first establish that the accused persons had custody and control over 'anything containing any dangerous drugs'. If the prosecution succeeds in proving that the accused persons had custody or control of the drugs found in the pondok, the presumptions of both knowledge and possession will be raised under s 37(d). To establish custody and control of the drugs, the prosecution therefore must adduce evidence to this effect. It is imperative that there must be a close nexus between the drugs found in the pondok and the accused persons. For this purpose, the prosecution may attempt to rely on the presumptions under s 37(g). However, it must be stressed that if this presumption is applicable, only knowledge and not custody and control will be presumed. In any case, before the presumption under s 37(g) may be relied upon, it must first be established that the accused persons had care and management of the pondok so as to deem them to be the occupiers of the pondok under the presumption in s 37(b).

It would therefore be clear that for the prosecution to rely on the presumption under s 37(d), the prosecution must first establish custody and control of the drugs found in the pondok, and to rely on the presumption under s 37(g), the prosecution must show that both the accused had care and management of the pondok so as to deem them to be occupiers under s 37(b).

Occupiers

To establish custody and control over the drugs found in the pondok or to establish that the accused persons had knowledge of the drugs, the prosecution must establish occupancy of the pondok by the accused persons.

There is, however in the present case, no other evidence to establish occupancy of the pondok by the accused persons, except for the keys found at no 62 to the door to the pondok and the electricity bill for the pondok being found also at no 62.

It appears to this court that in the absence of any other evidence, occupancy of the pondok cannot be conclusively established by these two factors alone. There is not an iota of any other evidence of occupancy of the pondok by both accused. There were no personal items found there, the accused persons were not found in the pondok during the time of the raid; nor was there any evidence even to establish that they were at any time seen at the pondok. Even the evidence of Mat bin Daros, who previously occupied the pondok and whose name still appears on the electricity bill, did not raise any indication that either or both of the accused persons had occupancy of the pondok. The prosecution's case may possibly have been strengthened if the electricity bill to the pondok was in fact in the name of either of the accused persons. The fact remained that it was still in the name of Mat bin Daros. It is even speculative, as defence counsel raised, as to whether Mat bin Daros himself, still continued to maintain the care and management of the pondok. Further, there is no evidence even to indicate that either of the accused persons had taken over occupancy of the pondok by previously paying the electricity bill for the pondok though it remained in the name of Mat bin Daros.

It should perhaps be emphasized that in the absence of any other evidence, a person should not be implicated merely by alleging that he was the occupier of the premises where the drugs were found. Even in cases where occupancy was established, the Supreme Court in a number of recent cases has exercised caution in holding that the mere presence of drugs in the premise is sufficient to implicate the occupiers of the premises: see *Choo Chang Teik & Anor v PP*;[1] *Lee Chee Meng v PP*;[2] and *Pang Chee Meng v Pendakwa Raya*.[3] What more in cases where there is no clear evidence of occupancy by the accused persons.

Conclusion

From the given evidence, the prosecution had a difficult task of establishing possession of the drugs by both or either of the accused persons. The available evidence was insufficient for the prosecution to successfully establish any of the necessary ingredients of the offence.

It cannot therefore be said that the accused persons had custody and control of the drugs or even had knowledge of it, either by the application of the presumptions or by any direct evidence.

On this ground alone, it appears to me sufficient to hold that the prosecution had failed to make out a prima facie case against either or both of the accused persons, which if unrebutted would warrant their conviction.

Therefore, applying the principles enunciated in *Haw Tua Tau v PP*[4] and *PP v Munusamy*,[5] I hold that no prima facie case has been made out against either the first or the second accused. I therefore acquit and discharge both the first accused and the second accused.

All exhibits to be retained pending the expiration of any appeal against this decision.

Both accused acquitted.

Reported by Teh Y-Lyn